

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: DONALD R. JOHNSON) OEIG Case #17-01432

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and to Donald R. Johnson at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. ALLEGATIONS

On July 19, 2017, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) received a complaint alleging that Illinois Workers’ Compensation Commission (IWCC) employee Frank Capuzi disseminated emails that, among other things, were racist, sexist, and homophobic. While investigating Mr. Capuzi’s emails, the OEIG discovered that some of the emails in question originated with another IWCC employee, Donald R. Johnson. The OEIG expanded the investigation to include Mr. Johnson’s use of his State email account.

II. BACKGROUND

A. IWCC Policy

The IWCC Employee Manual provides the following:

- Employees are prohibited from using State systems to post or disseminate any materials, including political and religious materials, that are not work-related and may reasonably be expected to offend one or more coworkers, licensees, and other contacts.
- Employees are prohibited from engaging in unbecoming conduct, including conduct that may bring IWCC into disrepute, or conduct that reflects discredit upon the employee as a representative of IWCC.

The violation of IWCC rules may be grounds for disciplinary action, up to and including discharge.¹

B. Frank Capuzi And Donald Johnson

Frank Capuzi worked for IWCC and its predecessor agency beginning in 1982, most recently as a Public Service Administrator in the Insurance Compliance Division. That division works to ensure that all employers subject to the Workers' Compensation Act carry proper insurance.

Donald Johnson has worked as an Insurance Compliance Investigator with the IWCC since October 1, 2008. His duties include verifying that employers carry workers' compensation insurance, and investigating employers who are suspected of failing to comply with workers' compensation statutes.

III. INVESTIGATION

OEIG investigators obtained the stored electronic contents of Mr. Capuzi's State email account for the period January 1, 2014 through September 2017. However, on July 24, 2017, the Chicago Tribune published an article which identified Mr. Capuzi as the source of racist, sexist, and anti-gay emails found in the email account of a City of Chicago employee,² and three days later Mr. Capuzi notified the IWCC of his intent to retire; his retirement was effective on July 31, 2017. Therefore, investigators reviewed the emails to see if they reflected more extensive or egregious misconduct by Mr. Capuzi than had already come to light. Because investigators did not identify such additional misconduct, the allegation against Mr. Capuzi was administratively closed and no further investigation was done regarding him.

The Capuzi emails that were provided with the complaint and cited in the Tribune article showed that one of them had come from "DONALD R JOHNSON" at a redacted email address.

¹ The current version of the IWCC Employee Manual took effect on September 1, 2014. Some of the emails discussed in this report were disseminated before this version of the manual was effective. Although the previous version did not contain the same provisions cited in the text, it provided that "The Internet shall be used for official business only. Employees who are found to be using it inappropriately will be subject to discipline and charged for the actual fees plus \$1.00 per minute." IWCC Employee Manual at 8 (effective 2004).

² Ray Long & Todd Lighty, *Racist Emails Scandal Moves Beyond Chicago as Illinois Opens Investigation into State Employee's Role*, CHICAGO TRIBUNE, July 24, 2017, <http://www.chicagotribune.com/news/local/politics/ct-chicago-water-department-emails-capuzi-20170724-story.html> (last visited February 4, 2019). The emails discussed in the Tribune article appeared to be the same ones that the OEIG had received with the complaint.

Investigators determined that a Donald R. Johnson, like Mr. Capuzi, was a State employee with the IWCC. Accordingly, investigators retrieved and reviewed the stored electronic contents of Mr. Johnson's State email account for the period January 1, 2014 through August 28, 2018, approximately 11,800 emails. Investigators identified eighteen email threads in Mr. Johnson's State email account that were not work-related and contained images of naked women, or included sexual, racist, political, or religious content.³

Investigators interviewed Mr. Johnson on November 29, 2018. He confirmed his State and personal email addresses to the investigators. When shown each of the eighteen non-work-related email threads the OEIG discovered in his State email account, he either admitted that he had sent the emails to or from his State email account, or conceded that he "apparently" had done so; Mr. Johnson did not deny sending any of the emails. He further admitted that each of the emails violated IWCC policy. The emails are as follows:

A. Emails With Images Of Naked Women And/Or Sexual Content

Mr. Johnson's email account contained two email threads with images of naked women. On February 12, 2017, Mr. Johnson sent an email from his personal email account to his State email account. On February 14, 2017, he forwarded that email from his State email account to his personal email account. The subject line read, [adult or sexual title redacted].⁴ The email contained approximately twelve embedded images of naked women with titles including [Four adult or sexual content titles redacted.]

On February 17, 2016, Mr. Johnson sent an email from his personal email account to his State email account. The subject line read, [adult or sexual content redacted].

In addition to the emails containing naked images, Mr. Johnson's email account contained six email threads with sexual content, both explicit and mild. On March 5, 2017, Mr. Johnson sent an email from his personal email to his State email. On March 7, 2017, he forwarded that email to Mr. Capuzi's State email. The subject line read, "Funny Newspaper Headlines" and the body of the email consisted of clippings of newspaper headlines, some of which have a sexual double meaning, including [two adult or sexual content headlines redacted].

On February 8, 2017, Mr. Johnson sent an email from his personal email to his State email. The body of the email was a joke referring to women's breasts.

On April 10, 2016, Mr. Johnson sent an email from his personal email to his State email. On April 11, 2016, he forwarded that email from his State email to another individual. The subject line of the email read "Memes" and the content consisted of eleven internet memes, several of which contained explicit sexual references, including references to condoms, oral sex, and anal sex.

³ Investigators also identified three non-work-related emails (two with political content and one with sexual content) that other State employees sent to Mr. Johnson in 2014 and 2016. Because of the small number and the age of these emails, the OEIG is referring them to the IWCC for any action it deems appropriate.

⁴ The subject line of this email also included "[External]" and several "FW" and "Fwd" notations. For clarity, this report deletes those notations in the subject line of this email and in all other email subject lines described.

On August 12, 2015, Mr. Johnson sent an email from his State email to another State employee. The subject line of the emails read [adult or sexual content redacted] and the content was a joke referring to a man's testicles.

On April 15, 2014, Mr. Johnson sent an email from his State email to Mr. Capuzi's State email, forwarding content from a non-State employee in which that person wrote, [adult or sexual content redacted].

On February 19, 2014, Mr. Johnson sent an email from his State email to his personal email with the subject line "Faceless." The content of the email was a series of cartoons which contained mild sexual humor, including references to lovemaking, infidelity, and women's breasts.

B. Emails With Racist, Political And/Or Religious Content

Mr. Johnson's email account contained several email threads with racist material and/or political content, some containing religious overtones as well. On February 26, 2014, Mr. Johnson sent an email from his State email account to Mr. Capuzi's State email account. The email forwarded an email that Mr. Johnson had received from a non-State employee. The subject line read, "My day keeps getting worse" and the content of the email read:

I should have stayed in bed today. After my ride with the hindu this morning, I spoke to not one, not two, but three [racial content redacted] dumbasses, before 10:00am.

On February 4, 2014, Mr. Johnson sent an email from his State email account to Mr. Capuzi's State email account, again forwarding an email that Mr. Johnson had received from the non-State employee. The email read:

Tell Frank thanks for the coffee and that now we are in a fight about it. Have a blessed day. (That's what [racial and adult content redacted])

On January 17, 2018, Mr. Johnson sent an email from his personal email to his State email. It contained a long argument regarding keeping the words "under God" in the Pledge of Allegiance with political connotations.

On October 28, 2017, Mr. Johnson sent an email from his personal email to his State email containing a long criticism of political correctness, illustrated by a purportedly historical exchange between President Truman and General MacArthur at the end of World War II which contained a disparaging reference to Japanese people.

On July 18, 2017, Mr. Johnson sent an email from his personal email to his State email with the subject line, "Emanuel proposes new bus to start off this school year Sure to get him re elected" The body of the email contained a photo of a military armored personnel carrier with a school bus stop sign on it, with a child exiting the rear door of the personnel carrier, with the caption, "New School Buses in Chicago."

A March 4, 2017 email, which Mr. Johnson sent from his personal email to his State email, consisted of a piece lauding Republican presidents and candidates and denouncing Democratic ones in derogatory terms.

On February 1, 2016, Mr. Johnson sent an email from his personal email account to his State email account. The body of the email read, “Have you seen any photos like this in the last 7 years? – with the mutt in office now. Me neither.” It contained numerous photos of former President George W. Bush alongside members of the U.S. military and wounded soldiers.

A July 23, 2015 email, which Mr. Johnson sent from his personal email to his State email, with the subject line “Under Attack,” read in part:

President Obama is encouraging schools to teach the Quran for extra credit, while at the same time they cannot even talk about the Bible, God, pray, or salute the American Flag. The direction this country is headed should strike fear in the heart of every Christian, especially knowing that the Muslim religion believes that if Christians cannot be converted, they should be annihilated, ie; wiped out entirely ... YOU KNOW KILLED! . . . Christianity is under attack and is programmed for total annihilation!

A November 26, 2014 email, which Mr. Johnson sent from his personal email to his State email, criticized the U.S. government for providing foreign aid to countries “that hate us,” particularly African nations.

On May 11, 2014, Mr. Johnson sent an email from his personal email to his State email, with the subject line “Move over Hanoi Jane.” The email forwarded an image of Michelle Obama on a visit to China, and accompanying text:

Move over Hanoi Jane, here comes “Peking Michelle!!!”
Michelle Obama waves red communist flags on her taxpayer funded visit to China.
Anyone remember her ever waving an American flag? www.teapartynation.com

Additional text read: “Well, I guess it was almost a foregone conclusion . . . but here it is, live and in living color!! (No pun intended)”

IV. ANALYSIS

IWCC rules prohibit employees from using State systems to disseminate materials, including political and religious materials, that are not work-related and may reasonably be expected to offend others. In addition, the IWCC rules forbid employees from engaging in unbecoming conduct, including conduct that may bring the agency into disrepute or reflect discredit upon the employee as a representative of the IWCC.⁵

⁵ IWCC rules also limit the use of State equipment, including State email systems, to the conduct of official State business. The rules further state that personal use of IWCC telephones and e-mail must be limited. Mr. Johnson’s personal email usage possibly violated these restrictions. However, because the total number of personal emails over

Mr. Johnson violated IWCC policy by using his State email account to disseminate offensive materials, including obscene images, and racist, sexist, political, religious, and sexually explicit material. Specifically, Mr. Johnson used his State email account to disseminate multiple emails with images of naked women, and/or sexual material, some of which explicitly referred to specific sex acts. He also disseminated several emails containing racist material, including one referring to “[ethnic slur] dumbasses” and one using the N-word. He disseminated many emails containing political and religious content, including anti-Muslim invective. The emails were not work-related and may reasonably be expected to offend others. Mr. Johnson’s conduct discredits him as a representative of the IWCC and could bring the IWCC into disrepute, as illustrated by the negative publicity Mr. Capuzi’s actions received.

Therefore, the allegations that Donald Johnson used State systems to disseminate materials that are not work-related and may reasonably be expected to offend others, and that he engaged in conduct unbecoming an IWCC employee, are **FOUNDED**.⁶

V. FINDING AND RECOMMENDATION

As a result of its investigation, the OEIG finds that **THERE IS REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDING:**

- **FOUNDED** – Donald R. Johnson violated the IWCC Employee Manual by disseminating emails that were not work-related and could reasonably be expected to offend coworkers or other contacts; and engaging in conduct unbecoming an IWCC employee.

The OEIG recommends that the IWCC take disciplinary action, up to and including discharge, with regard to Donald R. Johnson.

No further investigative action is needed and this case is considered closed.

Date: February 7, 2019

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60602

By: **M. Katherine Fischer**
Assistant Inspector General

John C. Legan #140
Investigator

time is relatively small, the OEIG does not make a separate finding that Mr. Johnson violated the rules against personal use of email.

⁶ The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

1) Upon presentation of the report, Employee, Donald Johnson immediately expressed his desire to resign from state employment. Donald Johnson tendered a resignation letter dated February 14, 2019. The resignation is effective end of day, February 28, 2019. A copy of the letter of resignation is attached.

2) Mr. Johnson's Supervisor, _____ was advised of the findings as to Illinois Workers' Compensation employees, _____ and _____. Given the limited scope of their infractions, management believes an oral counseling is the appropriate level of discipline as provided by the AFSCME Contract.

3) Management has also decided to highlight by separate cover email to the upcoming on-time ethics training, the requirements as to state property and computer usage.

4) As to the mention of a single Johnson email sent to several email accounts including _____, the email in question was generated on November 7, 2014. On that date _____ was a private lawyer in the practice of law at the firm of Hennessy & Roach. _____ was appointed to be an Arbitrator on December 5, 2016 according to the Appointments website. While this offending email was received by him years prior, the Illinois Workers' Compensation Commission through the Ethics Officer will counsel _____ as to the offensive emails and the usage of state equipment and email accounts.

February 14, 2019

Chairman Joann M. Fratianni

Illinois Workers' Compensation Commission

100 W. Randolph Street, Suite 8-200

Chicago, IL 60601

Re: Notice of retirement

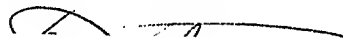
Dear Chairman Fratianni:

It is with a heavy heart that I submit my retirement.

My last day at the Commission will be February 28, 2019.

In my remaining days at the Commission, I will work at updating all my pending cases, and discuss the transition of my duties with my supervisor.

Sincerely,



Don Johnson

Lead Investigator

Cc:



RECEIVED

MAR 27 2019

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

EXECUTIVE ETHICS COMMISSION

IN RE: DONALD R. JOHNSON

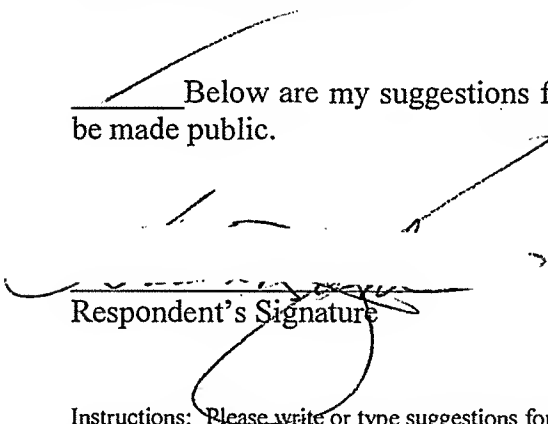
) #17-01432

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

 Below is my public response. Please make this response public if the summary report is also made public; or

 Below are my suggestions for redaction. I do not wish for these suggestions to be made public.


Respondent's Signature

3-25-19
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706



